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CHIEF CLERK'S OFFICE

THE MUSIC ZONE,

Complainant,

vs.

THE PEOPLES GAS LIGHT AND
COKE COMPANY,

Respondent.

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ICC No. 02-0472 and
02-0524 (Cons.)

RESPONDENT'S OPENING BRIEF

THE PEOPLES GAS LIGHT AND COKE COMPANY (hereinafter "Peoples Gas"), Respondent herein, by and through its attorney, Brett J. Beattie, files its Opening Brief at the request of the Hearing Examiner and pursuant to 83 Ill. Adm. Code §§ 200.800, 840 and in support thereof states as follows:

INTRODUCTION

This case involves two separate complaints involving two different accounts, both located at 2444 W. 16th Street in Chicago. On July 17, 2002, Complainant filed a formal complaint (ICC No. 02-0472) relating to a bill Complainant received on March 12, 2002 for an account on the second floor of 2444 W. 16th Street in Chicago (the "Second Floor Account"). Through this complaint, Complainant alleged that the March 12, 2002 bill was somehow inaccurate and that Peoples Gas improperly estimated its bills. The Second Floor Account's complaint seeks to have \$ 3,136.00 in charges removed from the March 12, 2002 bill, including a "make-up" bill for previously unbilled service between October 17, 2000 and February 18, 2002. The complaint was never amended.

On August 13, 2002, Complainant filed another formal complaint (ICC No. 02-0524) relating to a "make-up" bill it received on its third floor account at the same address (the "Third Floor Account"). The Third Floor Account complaint alleged that Peoples Gas impermissibly issued Complainant a \$ 7,490.62 bill on April 10, 2002. The complaint sought only for the Commission to direct Peoples Gas to remove the charges or provide some justification as to the basis of the bill. This complaint was never amended. On September 4, 2002, the Administrative Law Judge ordered the two complaints consolidated.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

An evidentiary hearing was held on the consolidated complaints relating to both the Second Floor Account and Third Floor Account on January 16, 2004. Ms. Kay Staley testified on behalf of Peoples Gas. Ms. Staley is a special service representative of Peoples Gas and a keeper of Peoples Gas' records. (Tr. 202-04.) Ms. Staley testified that she investigated Complainant's dispute regarding both the second and third floor accounts. (Tr. 203.) In the course of investigating Complainant's accounts, Ms. Staley produced a summary of Peoples Gas' records for the Second Floor Account and Third Floor Account separately. (*Id.*; Exhs. A, G.)

Mr. Joseph Hibbs testified on behalf of Complainant. Mr. Hibbs is the owner of Complainant Music Zone. (Tr. 121.) Complainant owns and occupies the second and third floor of an "old factory." (*Id.*) Throughout these two floors of the old factory, Complainant has built at least sixty-one different rooms which are rented out to musical groups for practices and performances. (Tr. 189.) Each musical groups renting space from Complainant has a key to the premises, and is granted unsupervised access twenty-four hours a day, seven days a week. (Tr. 195) In addition, Complainant increases the temperature inside the premises to at least seventy-one degrees throughout winter. (*Id.*)

I. The Second Floor Account (Complaint, ICC No. 02-0472)

Sometime in the fall of 2000, a fire occurred in the building that houses Complainant's business. (Tr. 187; 206-211; Exh. B.) This fire led to a variety of complications in the building where Complainant is located. Although, there is some question as to the effect of this fire upon the provision of gas to Complainant, the gas to the Second Floor Account had been turned off and it was having problems with its meter. (*See* Exh. B)(Peoples Gas' records of service calls to Complainant's second floor.) On October 17, 2000, a new meter was installed for the Second Floor Account, reading 0006.¹ (Tr. 205, 222; Exh. A)

The meter functioned properly when installed. Peoples Gas' meter records reveal that the meter was tested and proved to be in proper working order approximately two weeks before its installation on the Second Floor Account. (Tr. 212-13; Exh. C). When tested, the meter ran .35 % fast, a passing score under the requirements of 83 Ill. Adm. Code § 500.190. (Exh. C.) Thus, the meter was in good working order and reading accurately.

The March 12, 2002 bill (the disputed bill), issued to the Second Floor Account includes two different balances Complainant owes Peoples Gas on the Second Floor Account. (Ex. A.) The first balance is a \$ 6,941.24 "make-up" bill for gas service consumed between October 17, 2000 and February 4, 2002, (*Id.*) The second balance is for gas service from February 4, 2002 through March 8, 2002, during which Complainant consumed 827 CCFs and was billed \$ 850.28. (*Id.*) The total of these two bills was \$ 7,791.52, as issued on March 12, 2002. (*Id.*) In addition, all late charges relating the March 12, 2002 bill that accrued between April 8, 2002 and March 5, 2003 have been removed from Complainant's account. This appears as a \$ 1,051.36 credit to the account on the last line of Exhibit A.

¹ Meter number P 1682917 was the meter installed on the Second Floor Account on October 17, 2000.

Prior to March 12, 2002, the Second Floor Account paid for less than the actual amount of gas it consumed between October 17, 2000 and February 4, 2002. (Tr. 232; Exhs. A & E.) The underpayment was due to Peoples Gas' underbilling the Second Floor for its usage. (Tr. 232) As Ms. Staley explained, because Peoples Gas could not obtain actual readings of Complainant's meter, it was forced to estimate gas usage on the Second Floor Account. (*Id.*; Exh. E.) It was not until Peoples Gas gained access to the Second Floor Account meter that the underbilling became detectable.

The meter for the Second Floor Account is difficult to obtain actual readings on. Complainant admitted that the meter was located in its basement. (Tr. 186.) To reach the basement, Peoples Gas' meter readers must go through a garage door (that could be locked) and down into the basement, which also has a locking door. (Tr. 186, 188.) Therefore, Peoples Gas cannot obtain actual readings on the second floor meter unless its meter readers negotiate two potentially locked doors and find their way into Complainant's basement.

Ms. Staley testified that Peoples Gas maintains meter reading routes so that it can read every meter possible. (Tr. 215.) Indeed, every bill Peoples Gas issued to Complainant through March 5, 2003 provided a "next meter reading" date where Peoples Gas scheduled an actual reading of the meter on the Second Floor Account. (*See* Complainant's Exh. 5, the April 9, 2001 through December 5, 2003 bills for the second floor.) Complainant recognizes and admits that Peoples Gas has a meter route whereby Complainant's neighbors' meters were routinely read. (Tr. 188.) Moreover, Complainant admits that, on at least one occasion, it found a meter card left by Peoples Gas' meter readers on an unsuccessful attempt to read its meters. (Tr. 189.) Despite Peoples Gas' properly scheduled attempts to read the meter for the Second Floor Account, an actual reading was not obtained until February 18, 2002. (Tr. 225.)

The Second Floor Account's actual usage was more than double what Peoples Gas had estimated. Ms. Staley testified that between October 17, 2000 and February 4, 2002, Peoples Gas estimated total consumption to be 6,939 cubic feet ("CCF") of gas.² (Tr. 232; Exh. A.) She further explained that on February 18, 2002, Peoples Gas obtained an actual reading of the meter serving the Second Floor Account. (Tr. 225-26, 232; Exh. E.) At that time, the meter read that 15,880 CCFs were consumed since the meter was installed on October 17, 2000, and not the 6,939 CCFs originally estimated. (Tr. 232; Exh. A.) The difference between the two readings clearly shows that the Second Floor Account actually consumed 15,880 feet of gas. (Tr. 225-26, 232; Exh. A.) Accordingly, Peoples Gas issued a "make-up" bill, charging the Second Floor Account for actual usage that had not previously been billed. (*Id.*)

The "Make-up" Bill

Ms. Staley testified that the make-up bill was calculated in three steps. (Tr. 229, 245-46, 271-72, 276-77.) First, Peoples Gas computed the Second Floor Account's actual usage. Second, Peoples Gas allocated the actual usage over the various months during the period using degree-day analysis. (Tr. 233.) Finally, Peoples Gas cancelled all prior bills issued to the Second Floor Account between October 17, 2000 and February 12, 2002. (Tr. 229, 245-46, 271-72, 276-77.) These cancelled bills were credited to the Second Floor Account as a lump sum during calculation of the "make-up" bill. (*Id.*)

At the first step of the rebilling, the Second Floor Account's actual usage was computed in the manner discussed above. Second, Peoples Gas allocated the actual usage over the various months involved in the rebilling period using Commission-approved degree-day analysis. (Tr. 233; Exh. F.) Accordingly, the 15,880 CCFs consumed by the Second Floor Account over the

² To ease the discussion, all CCFs referred to in this brief have been divided by ten, so that the CCFs equal the meter reading differences. In this example, the 6,939 CCFs referred to above is actually the meter reading difference. Accordingly, Complainant's estimated consumption was 69,390 CCFs.

period was allocated to the individual month in which the gas was consumed. (Tr. 237-244; Exh. F.) The Second Floor Account was then billed for its usage on a month to month basis using the applicable gas charges. (*Id.*)

The third step, Ms. Staley clarified, was to cancel all previously estimated bills issued to the Second Floor Account between October 17, 2000 and February 4, 2002. Ms. Staley explained that a lump-sum credit of \$ 11,085.68 included all bills previously issued to the Second Floor Account for estimated consumption of 6939 CCFs. (Tr. 229, 232, 245-46, 275-76; Exh. A.) This lump-sum credit was applied at the end of the rebilling. The following cancelled bills compose this \$ 11,085.68 lump sum credit:

<u>Amount of Credit</u>	<u>Billing Period</u>
\$ 113.67	October 17, 2000 - November 3, 2000
\$ 707.68	November 3, 2000 - December 6, 2000
\$ 1,145.09	December 6, 2000 - January 5, 2001
\$1,157.87	January 5, 2001 – February 6, 2001
\$ 912.76	February 6, 2001 - March 7, 2001
\$ 702.20	March 7, 2001 - April 5, 2001
\$ 451.77	April 5, 2001 - May 7, 2001
\$ 94.71	May 7, 2001 - June 7, 2001
\$ 86.55	June 7, 2001 - July 9, 2001
\$ 162.09	July 26, 2001 - August 8, 2001
\$ 71.97	August 8, 2001 - September 7, 2001
\$ 216.13	September 7, 2001 -October 9, 2001
\$ 114.94	October 9, 2001 - November 7, 2001
\$ 177.08	November 7, 2001 - December 10, 2001
\$ 865.55	December 10, 2001 – January 8, 2001
\$4,042.05	January 8, 2002 - February 4, 2002
\$ 11,022.11	TOTAL

(Tr. 229, 245-46, 258, 276; Exh. A)

Each of these cancelled bills appears on Exhibit A (above the blue-shaded area), which is the summary of Peoples Gas' records, prepared by Ms. Staley, and were deducted from the actual usage upon which the make-up bill is based. (*Id.*) Therefore, consistent with Ms. Staley's testimony, every estimated bill issued between October 17, 2000 and February 2002 period was cancelled and credited to the Second Floor Account before the "make-up" bill was issued. As a result, the "make-up" bill is complete and accurate.

II. The Third Floor Account

The Third Floor Account provides heat and hot water to over 60 different rooms in a large warehouse type building. (T. 189.) Complainant rents these rooms out to various musical groups throughout any given day in the course of its business. Meter number P 1909029 has measured gas consumption on the Third Floor Account since December 29, 1999. (Tr. 302.)

The Third Floor Account's meter functioned properly. On December 14, 1998, the meter passed a meter test by registering .5 % fast. (Tr. 308-09; Complainant's Cross-Exh. 1.) Therefore, the meter read accurately and performed within the applicable guidelines.

In December 2000, the Third Floor Account nearly doubled its gas requirements for heating the 60 rooms there. Complainant stated that prior to December 2000, the third floor operated on two gas furnaces each with a BTU rating of 125,000 BTUs and one electric hot water heater that used no gas at all. (Tr. 173-74.) Complainant also admitted that in December 2000 he replaced the two furnaces and added an extra one. (Tr. 175.) Each of these three furnaces installed in December 2000 carried a BTU rating of at least 150,000 BTUs. (*Id.*) Moreover, Complainant replaced the electric water with a gas-powered one that carried a BTU rating of 34,000. (*Id.*) All in all, in December 2000, Complainant increased the combined BTU

ratings of its appliances from 250,000 BTUs to at least 484,000 BTUs. (Tr. 175-76.) Therefore, Complainant's gas needs since December 2000 have nearly doubled.

Actual readings on the Third Floor Account are difficult to obtain. Complainant admits that Peoples Gas could never reach the meter without him. (Tr. 189.) ("[Peoples Gas] definitely needs me to get in.") As Mr. Hibbs testified, Peoples Gas' meter reader must go through three locked doors: "a door on the ground floor that's locked, a hallway door to get into the third floor, and then the meter's [sic] actually in the room...that's also locked." (*Id.*) Nonetheless, Peoples Gas attempted to read the meter. It scheduled a time with Complainant on every estimated bill, as well as walked its meter reading routes. (Tr. 188, 215; Exh. 9.) Nonetheless, between September 26, 2000 and February 18, 2002, Peoples Gas was unable to obtain an actual reading of the meter for the Third Floor Account.

Peoples Gas estimated consumption on the Third Floor Account between September 26, 2000 and February 7, 2002. (Tr. 286; Exh. G.) During this period, Peoples Gas estimated that Complainant consumed 411 CCFs of gas. (Tr. 290; Exh. G.) This amount was calculated by subtracting the actual meter reading of 75,697 on September 26, 2000 from the February 7, 2002 estimate of 76,118 CCFs. (*Id.*) Therefore, Peoples Gas estimated and billed Complainant for only 411 CCFs of gas over the September 2000 through February 2002 period.

The Third Floor Account was underbilled between September 26, 2000 and February 7, 2002. (Tr. 287.) Ms. Staley explained Peoples Gas did not discover the underbilling until an actual reading of the Third Floor Account's meter was obtained on February 18, 2002. (Tr. 287-88.) The actual reading revealed 8,698 CCF of gas were consumed between September 26, 2000 and February 18, 2002, not the 411 CCFs previously estimated. (Tr. 290; Exh. G.)

Peoples Gas then immediately revised the account to reflect the actual usage and issued a “make-up” bill. (Tr. 288; Exh. 9, April 10, 2002 bill.) The “make-up” bill for the Third Floor Account was calculated in the same manner as the Second Floor Account: using degree-day analysis to distribute the actual usage, preserving all prior payments on the Third Floor Account (by maintaining a “rolling” account balance), and canceling all previously estimated bills and crediting the account in a lump sum. (Tr. 288-89, 291-94.; Exh. G, line 26). A \$ 912.99 lump sum credit to the Third Floor Account includes all Complainant's previously estimated bills which were cancelled in calculating the “make-up” bill. (Exh. G, line 26.) Therefore, Peoples Gas accurately computed the “make-up” bill it issued to the Third Floor Account for 8,287 CCFs that was consumed but never billed for. (*Id.*)

ARGUMENT

Complainant failed to establish that Peoples Gas violated the Public Utilities Act, 220 ILCS 5/1-101, et seq., or any order or rule of the Commission and, therefore, both complaints should be denied. The Commission is given the authority to hear complaints regarding “any act or things done or omitted to be done in violation, or claimed violation, of any provision of [the Public Utilities Act, [220 ILCS 5/1-101, et seq., the “PUA”] or any order or rule of the Commission”. 220 ILCS 5/10-108. The burden of proof is on the Complainant to establish the violation. *City of Chicago v. Illinois Commerce Commission*, 13 Ill.2d 607, 150 N.E.2d 776 (1958), *see also* 83 Ill. Admin. 200.570 (requires the Complainant to open and close proceedings, indicating that the Complainant has the burden of proof, just as the plaintiff has the burden of proof in the trial courts). Here, the Complainant failed to meet its burden.

Peoples Gas has not violated the PUA or any order or rule of the Commission with respect to Complainant’s Gas service on either account. The gist of the allegations in both the

Second Floor Account and Third Floor Account complaints is that Peoples Gas provided too many estimated bills and that the amount presently sought by Peoples Gas is incorrect.

Complainant failed to show that the estimated bills violated a Commission rule or that the billing was incorrect for either account.

I. Both the Second Floor Account and Third Floor Account Were Properly Estimated By Peoples Gas in Accordance with Commission Rule 280.80

Complainant has not met its burden of showing that Peoples Gas illegally estimated gas consumption on either the Second Floor Account or the Third Floor Account. Indeed, Peoples Gas properly estimated the bills for both accounts. Under 83 Ill. Admin. Code 280.80 (a), Peoples Gas may consecutively estimate bills when: (1) the procedure used by the utility to calculate estimated bills has been approved by the Commission; and (2) the word “estimate” appears prominently on the face of the bill. (*See Johnson v. Peoples Gas, Light and Coke Co.*, 02-0542, attached hereto as Brief Exhibit “A”.) In the case of both accounts, Peoples Gas has satisfied each of these requirements. First, the Commission, in other cases, has already generally approved Peoples Gas’ estimated billing practice. *Id.* Second, a careful review of the bills comprising Complainant’s Exhibits 5 & 9 reveal that the word “estimate” appears in every bill issued between October 17, 2000 and February 12, 2002, in the same method as the Commission approved in *Johnson*. Moreover, this labeling of “estimate” comports with the bill format approved by the Commission in Peoples Gas’ Tariff. (*See Terms and Conditions of Service Tariff*, approved by the Commission in Docket No. 95-0032, attached hereto as Brief Exhibit “B”.)

Peoples Gas also complied with § 280.80 (b). 280.80 (b)(1) further allows Peoples Gas to estimate Complainant’s bills when, *inter alia*: (1) Peoples gas makes an appointment with the

customer, or takes other appropriate and reasonable measures to read the meter; or (2) when the customer has otherwise made an actual reading of the meter unnecessarily difficult; or (3) circumstances beyond the control of the utility make an actual reading of the meter difficult. 83 Ill. Adm. Code 280 (b) (1), (3) & (4).

In this case, Peoples Gas made appointments with Complainant to read the meter on both his Second Floor Account and Third Floor Account. (See Complainant's Exhs. 5 & 9.) Every bill sent to either the Second Floor or Third Floor Account stated a date Peoples Gas intended to read the meters.³ (*Id.*) Moreover, Complainant's own testimony undercuts its allegation that Peoples Gas never attempted to read its meters. Mr. Hibbs admitted that other business owners in Complainant's same building have their meters read regularly. (Tr. 188.) ("*I'm sure [Peoples Gas] gets in there to read the other tenants' meters. I don't know why they can't get mine read in the same place.*") Mr. Hibbs' recognizes and admits that Peoples Gas maintains meter routes in his neighborhood and that Peoples Gas actively runs those routes. Indeed, Complainant admits that, on at least one occasion, it found a meter card left by Peoples Gas after an unsuccessful attempt to obtain actual readings of Complainant's meters. (Tr. 189.) Unless Complainant can advance a sustainable theory as to why Peoples Gas would not read its meter, but would read Complainant's neighbors', Complainant cannot prove that Peoples Gas' estimates violated any law.

Moreover, obtaining a reading on either of Complainant's meters was extremely difficult. The meters for both the Second Floor Account and Third Floor Account were located inside Complainant's premises. (Tr. 186, 189.) Therefore, at the outset, Peoples Gas could not obtain actual readings on either of the meters unless Complainant provided immediate access to the

³ For example, the June 11, 2001 bill for the Second Floor Account states that Complainant's "next meter reading" is July 9, 2001. (*Id.*)

Premises. No such access was provided.⁴

The meter for the Second Floor Account was difficult for Peoples Gas' meter readers to reach and find. As Mr. Hibbs testified, this meter was located behind a garage door (which could be locked) and a basement door (which could be locked). (Tr. 186, 188). Although, sometimes both the garage door and the basement door may be unlocked simultaneously, Complainant could not assure this. Therefore, Complainant has failed to meet its burden of showing that Peoples Gas prevented a reading of the meter for the Second Floor Account.

The meter for the Third Floor Account was even more difficult for Peoples Gas to obtain readings on. Only Complainant's owner, Mr. Hibbs, ever has access to the Third Floor Account's meter. (Tr. 189.) The third floor meter is located behind three locked doors, at least one of which only Mr. Hibbs has a key to. Mr. Hibbs put it best when he testified that standing between a meter reader and the third floor meter is "a door on the ground floor that's locked, a hallway door to get into the third floor, and then the meter's [sic] actually in the room...that's also locked." (*Id.*) Thus, Complainant has not met its burden of showing Peoples Gas violated § 280.80 (a). 83 Ill. Adm. Code 280.80.

Perhaps even more compelling is Complainant's failure to take steps to have actual readings taken of its meters. Complainant never attempted to read its own meters and call in the results. Furthermore, Complainant made no effort to provide special access to Peoples Gas.

⁴ Joe Hibbs' contention that he was "always" available is unbelievable. First, such a contention ignores the fact that he attended the January 16, 2004 hearing—just one example of his unavailability at 2444 W. 16th Street. Second, Complainant runs a business that can rent out at least 61 different music groups at any given time. Complainant's business owner, Mr. Hibbs, testified that he keeps a close eye on things. Accordingly, being pulled in so many different directions; Mr. Hibbs can not credibly claim that his whereabouts was always known or that Peoples Gas did not attempt to find him in its attempts to read his meters. Likewise, Mr. Hibbs presented no physical or corroborating evidence that he was "always" at Complainant's premises or that Complainant was equipped with any kind of communications devices enabling a quick determination of Mr. Hibbs' whereabouts at any given time.

Complainant did not attempt to independently schedule a meter reading. Indeed, Complainant, although fully aware that its bills were being estimated, did nothing to correct or mitigate the situation.

Consequently, Complainant can hardly point its finger at Peoples Gas for having its bills estimated. Peoples Gas' estimates were in accordance with the PUA and the Commissions rules and regulations, particularly, Section 280.80 (a), (b). Therefore, Complainant has not demonstrated that Peoples Gas violated any law when it estimated Complainant's gas usage.

II. Peoples Gas Lawfully Computed and Rendered the March 12, 2002 Bill to the Second Floor Account

Complainant has failed to show Peoples Gas violated the PUA or the Commission's rules with respect the Second Floor Account. The March 12, 2002 bill for the Second Floor Account was properly computed. First, Complainant did not even try to argue that the \$ 850 in charges for gas service between February 4, 2002 and March 8 was somehow incorrect. Second, the "make-up" bill portion of the March 12 bill was accurate and computed in accordance with Section 280.100 of the Commission's Rules. 83 Ill. Adm. Code 280.100.

The PUA and Commission rules and regulations allow Peoples Gas to issue "make-up" bills to its customers for previously rendered gas service that went unbilled. Section 280.100, the Commission's "Unbilled Service" provisions provides that "[a] utility may render a bill for services or commodities provided to...[a] non-residential customer only if such bill is presented within two years from the date the services or commodities were supplied." 83 Ill. Adm. Code 280.100 (a)(2). In addition, § 280.100 (a)(2) allows Peoples Gas to bill Complainant for unbilled service as far back as 24 months, if necessary.⁵ Accordingly, Peoples Gas properly billed Complainant for its unbilled service during a fifteen-month period. Moreover, § 280.100 (d)

⁵ Complainant is a non-residential customer. See 83 Ill. Adm. Code 280.40 ("Nonresidential Service").

clarifies that that such “make-up” bills can be issued for “previously unbilled utility service resulting from two or more estimated bills,” which is the case with the Second Floor Account. 83 Ill. Adm. Code 280.100 (d). Therefore, Peoples Gas actions are fully within the authority granted to it by the Commission’s rules.

Peoples Gas Measured Complainant’s Second Floor Actual Consumption Accurately

The “make-up” bill issued on March 12, 2002 for the Second Floor Account accurately measured gas consumed between October 17, 2000 and February 18, 2002. As Ms. Staley explained, this “make-up” bill was based on actual usage as opposed to the underestimates upon which the Second Floor Account had previously been billed. The Second Floor Account consumed 15,880 CCFs between October 17, 2000 and February 18, 2002, but was billed for only 6,939 CCFs. (Tr. 225, 232; Exh. A.) Therefore, until the “make-up” bill, the Second Floor Account was never billed for 8,941 CCFs it actually consumed.

Moreover, Complainant’s argument that gas usage on the Second Floor Account was abnormally high is unsupported by the record. Not even a scintilla of evidence was offered demonstrating that the meter for the Second Floor Account was faulty or that Peoples Gas read its meter wrong. Indeed, the evidence clearly showed that the meter was functioning correctly, passing a meter test just two weeks prior to installation. (Tr. 212-13; Exh. C.) Nor did Peoples Gas read the meter wrong. The October 4, 2000 meter test contained in Exhibit C confirms the October 17, 2003 reading. (*Compare* Exh. A *with* Exh. C.) In addition, actual readings taken on October 30, 2003 and January 7, 2004 also support the February 18, 2003 reading. (The January 4, 2004 “Van” reading is an actual reading by a remote reading device.) Thus, the Second Floor Account meter functioned properly and was correctly read on October 17, 2003 and February 18, 2002.

Peoples Gas Correctly Computed the "Make-up" Bill for the Second Floor Account

The make-up bill Peoples Gas rendered to the Second Floor Account was accurately computed in accordance with § 280.100. (See 83 Ill. Adm. Code 280.100 (a), (d).) As Ms. Staley explained, the "make-up" bill accounted for all previously rendered estimated bills, all prior payments, and other credits to the Second Floor Account. (See Tr. 229, 245-46, 271-72; Exh. A.) In computing the unbilled service pursuant to § 280.100, Peoples Gas began with the balance of the previously-issued bill, \$ 4,042.25 issued on February 4, 2002 (this \$ 4,042.25 would eventually be removed from Complainant's account as part of a lump sum credit.) (Tr. 276-77; Exh. A.) By continuing a balance from the previous bill, all payments previously made on the Second Floor Account were preserved. Also, the Second Floor Account's actual usage of 15,880 CCFs was allocated to the proper month of consumption by Peoples Gas' use of degree-day analysis. (Tr. 233; Exh. F.) Degree-day analysis is the ICC's preferred and approved method for allocating underbilled service previously based on estimates. See *Smith v. The Peoples Gas, Light and Coke Co.*, 96-0160 (A copy of *Smith* is attached hereto as Brief Exhibit "C"); *Rodriguez v. The Peoples Gas Light and Coke Company*, 88-0169. Therefore, the actual charges were properly computed.

Peoples Gas correctly and accurately cancelled all of Complainant's previously estimated bills in a lump-sum of \$ 11,085.68. (Tr. 271-72, 276-77; Exh. A.) (On Exhibit A, this is visible on the last line of the blue-shaded area.) The February 12, 2002 bill of \$ 4,042.25 was included in the lump-sum cancellation and credit and therefore, was properly removed from the account.⁶

⁶ For the purposes of accounting, it is irrelevant whether the February 12 bill is removed from the Second Floor Account at the beginning or end of the rebilling. Boiled down to the basics the calculation appears as follows: $4,025.25 + 1 - 4,025.25 = 1$ (where "1" equals the value of the unbilled services minus all the

Therefore, Peoples Gas correctly computed Complainant's "make-up" bill in accordance with the PUA and § 280.100 of the Commission's rules.

In addition, Peoples Gas did not improperly charge Complainant late fees. Peoples Gas voluntarily credited Complainant's account for all late fees incurred between April 8, 2002 and March 5, 2003 that were related to the March 12, 2002 make-up bill. (*See* Exh. A.) This credit is in the amount of \$ 1051.36 and appears as a credit on the last line of Exhibit A.

The March 12, 2002 bill issued to the Second Floor Account complied with the PUA and the Commission's rules. The "make-up" portion of the bill was accurately calculated in accordance with § 280.100. Furthermore, the validity of the \$ 850 in charges for service between February 4, 2002 and March 8, 2002 is uncontested. Therefore, Complainant has not carried his burden of showing the March 12 bill was unlawful and the Administrative Law Judge should issue a proposed order denying Complainant's complaint as to the Second Floor Account.

III. Peoples Gas Lawfully Computed and Rendered the April 10, 2002 "Make-up" Bill to the Third Floor Account

Peoples Gas properly issued the April 10, 2002 "make-up" bill to the Third Floor Account for gas service that was consumed but never paid for. As Ms. Staley explained, the Third Floor Account consumed 8,698 CCFs of gas between September 26, 2000 and February 18, 2002, but was only billed for 411 CCFs. (Tr. 290; Exhibit H, line 26.) Therefore, until the "make-up" bill issued, the Third Floor Account was never billed for 8,287 CCFs of gas that it consumed.

Peoples Gas may lawfully collect the charges for this unbilled service on the Third Floor Account. Under § 280.100 (a)(2), Peoples Gas may lawfully render a bill to Complainant so

other previously estimated, but cancelled bills). In other words, in the end, on March 12, 2002, the Second Floor Account was only billed for the unbilled service.

long as the "bill is presented within two years from the date the services or commodities were supplied." In this case, Peoples Gas issued a "make-up" bill to the Third Floor Account on April 10, 2002, covering services going back to September 26, 2000, a sixteen month period. (Tr. 288.) Accordingly, the "make-up" bill Peoples Gas sent to Complainant was well within the two-year limitation of § 280.100 (a)(2).⁷ Therefore, Complainant cannot show that the April 10, 2002 "make-up" bill was unlawful.

Peoples Gas Accurately Measured Complainant's Third Floor's Actual Consumption

Complainant failed to prove Peoples Gas incorrectly measured consumption on the Third Floor Account. That the Third Floor Account consumed 8,698 CCFs of gas during the relevant period is substantiated by actual readings of 75,697 on September 26, 2000 and 84,395 on February 18, 2002. (Tr. 290; Exh. G.) Indeed, Complainant presented no evidence whatsoever that the meter for the Third Floor Account read differently on September 26, 2000 or February 18, 2002 than what Peoples Gas recorded. If the meter was wrongly read, Complainant would have provided its own proof as to what the meter read. But the fact is no such evidence was presented. Therefore, Peoples Gas properly measured Complainant's gas usage.

Moreover, the Commission should not overlook Complainant's increasing gas requirements. Since December 2000, the Third Floor Account almost doubled the combined BTU rating on its appliances, from 250,000 BTUs to 484,000 BTUs. (Tr. 173-75.) Therefore, the Third Floor Account's increased use was caused, at least in part, by a near doubling of its gas needs.

The meter for the Third Floor Account functioned properly. 83 Ill. Adm. Code 500.190

⁷ Moreover, § 280.100 (d) expressly allows Peoples Gas to issue a make-up bill for "previously unbilled utility service" in the following situations: (1) when there have been two or more consecutive estimated bills; or (2) utility billing error; or (3) meter failure, among other things. 83 Ill. Adm. Code 280.100 (d).

governs customer meter accuracy requirements. Under § 500.190 (a), a meter "installed for use of any customer shall not be more than two percent slow and not more than one percent fast." Therefore, any meter registering less than one percent fast is an accurate meter under Illinois law. In this case, the Third Floor Account's meter passed a meter test on December 14, 1998, prior to its installation. (See Complainant's Cross-Exhibit 1; Tr. 302, 308-09.) Ms. Staley testified that the meter test showed that the meter was within the acceptable range under § 500.190 (a) and did not need repairs. (Tr. 309-10.) Ms. Staley's explanation comports with the record of the meter test showing that the meter was only .5 % fast. (Complainant's Cross-Exhibit 1.) Therefore, under § 500.190, Complainant's meter was within the lawful range of accuracy and accurately measured Complainant's gas consumption.

Moreover, even assuming *arguendo* that Complainant's meter was fast, Complainant is not entitled to a billing adjustment. § 500.240 governs adjustments for meter error. 83 Ill. Adm. Code 500.240. Under § 500.240 the meter must be in error by more than four percent before any adjustment should be made to any customer's account. *Id.* In this case, Complainant hinges its case on the unsupported allegation that Complainant's meter was simply fast. However, Complainant makes no specific allegation whatsoever as to exactly how fast it believes its meter was reading. As a result, not only does Complainant's case suffer from a failure of proof, but its allegations are furthermore insufficient to sustain any billing adjustment based on meter failure. Therefore, Peoples Gas properly measured Complainant's gas consumption.

Peoples Gas Correctly Computed the "Make-up" Bill that was Issued to Complainant

Finally, the "make-up" bill issued to the Third Floor Account for 8,287 CCFs of unbilled service between September 26, 2000 and February 18, 2002 was properly computed. Ms. Staley explained that the "make-up" bill for the Third Floor Account was computed the same way as the

Second Floor Account. (Tr. 286-94.) All 8,698 CCFs consumed on the Third Floor Account was allocated over the various months as determined by degree-day analysis to arrive at a total actual bill over the period of \$ 8,301.12. (Tr. 286-94; Exh. G & H.) *See Johnson v. Peoples Gas, Light and Coke Co.*, 02-0452 (approving degree-day analysis). Therefore, Complainant's actual usage was properly allocated and billed for.

However, the Second Floor Account was not billed for the entire \$ 8,301.12 as a "make-up" bill. (Tr. 288-89; Exh. G, line 26.) Instead, Peoples Gas credited Complainant's account for all the estimated bills it had issued between September 26, 2000 and March 2002. In this case, the credit was for \$ 912.99. (*Id.*) Therefore, the "make-up" bill ultimately issued to Complainant for \$ 7,490.67 was only for unbilled service in accordance with § 280.100.

Complainant failed to show that Peoples Gas violated any provision of the PUA or Commission's rules when it issued a "make-up" bill to the Third Floor Account on April 10, 2002. The Third Floor Account used gas service between September 26, 2000 and February 18, 2002 that it never paid for. Peoples Gas calculated the "make-up" bill for the unbilled service in accordance with § 280.100. Therefore, the Administrative Law Judge should issue a proposed order denying the complaint as to the April 10 bill issued to the Third Floor Account.

CONCLUSION

Complainant failed to establish that Peoples Gas violated any provision of the PUA or the Commission's rules. Peoples Gas lawfully estimated gas usage on the Second Floor Account between September 26, 2000 and February 18, 2002, and on the Third Floor Account between October 17, 2000 and February 18, 2002 in accordance with the PUA and Commission's rules, including § 280.80 (a), (b). In addition, the March 12, 2002 bill issued to the Second Floor Account was lawful because it was accurately calculated according to § 280.100 (a), (d) of the

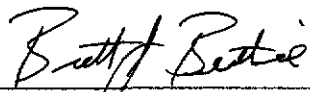
Commission's rules. Likewise, the April 10, 2002 "make-up" bill issued to the Third Floor Account was also legitimate because it too was correctly computed in accordance with Commission rule 280.100 (a), (d).

WHEREFORE, Respondent, PEOPLES GAS LIGHT AND COKE COMPANY respectfully requests that the Administrative Law Judge issue a Proposed Order denying Complainant, MUSIC ZONE's complaint relating to the Second Floor Account (ICC No. 02-0472) and also denying Complainant's complaint relating to the Third Floor Account (ICC No. 02-0524).

Dated: February 13, 2004

Respectfully submitted,

THE PEOPLES GAS, LIGHT AND
COKE COMPANY

By: 
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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

MUSIC ZONE,
Complainant,

v.

PEOPLES GAS LIGHT AND COKE COMPANY
Respondent.

ICC # 02-0472 and
02-0524 (Cons.)

NOTICE OF FILING

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Chicago, Illinois 60601-3104

PLEASE TAKE NOTICE that on this date Respondent in the above-captioned case sent by U.S. mail for filing with the Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62701, a Respondent's Opening Brief.

DATED: February 13, 2004

THE PEOPLES GAS LIGHT
AND COKE COMPANY

By: Brett J. Beattie
Brett J. Beattie, one of its attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Respondent's Opening Brief to the Administrative Law Judge by causing a copy to be placed in the U.S. mail, properly addressed and postage prepaid on February 13, 2004.

Respectfully Submitted,

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